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PERBADANAN PENGURUSAN DIAMOND F & ORS v. PESURUHANJAYA BANGUNAN KUALA LUMPUR & ANOR; PERBADANAN PENGURUSAN DIAMOND F & ORS (INTERVENERS)

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HIGH COURT MALAYA, KUALA LUMPUR
GAN TECHIONG JC
[ORIGINATING SUMMONS NO: WA-24NCVC-1263-04-2023]
7 APRIL 2025

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Abstract – *(i) The powers of the Commissioner of Buildings ('COB') are defined by the Strata Management Act 2013 ('SMA'). There are no provisions within the SMA or its Regulations that grant the COB the power to demand specific statutory declaration formats or to issue 'letters of recognition'. These acts are considered ultra vires; (ii) The COB should remain neutral and not enter the arena of internal disputes between proprietors regarding elections. Disputes must be resolved through proper legal channels, such as the Strata Management Tribunal; (iii) A bank cannot freeze a management corporation bank account, or refuse to recognise new signatories, based on a dispute among committee members. The bank must act on the official documents provided by the management corporation, such as meeting resolutions, even without a 'letter of recognition' from the COB.*

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STRATA PROPERTY: *Commissioner of Buildings – Powers and roles – Whether Commissioner of Buildings ('COB') statutorily empowered to demand specific statutory declaration formats – Whether COB empowered to issue 'letters of recognition' – Whether COB may enter arena of internal disputes between proprietor regarding elections – Whether powers of COB circumscribed by Strata Management Act 2013*

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The first plaintiff was the management corporation ('MC') of a stratified development known as Diamond F. So was the first intervener. The second and third plaintiffs and the second and third interveners were elected as committee members of the MC at its ninth annual general meeting ('AGM'). Disputes between the committee members arose when the third intervener filed an application, at the Strata Management Tribunal ('SMT') to challenge the validity of the election of the second plaintiff ('Tribunal Case No. 2105'). Meanwhile, the first defendant, *ie*, the Commissioner of Buildings of Kuala Lumpur ('COBKL') had issued a letter of recognition, validating the second and third interveners and the third plaintiff as committee members of the MC. The COBKL, in its letter to the second respondent, *ie*, Maybank Islamic Berhad ('Maybank'), stated that the second and third interveners and the third plaintiff were the legitimate committee members of the first plaintiff

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('letter of recognition dated 23 September 2021'). The SMT, in Tribunal Case No. 2105, ordered, *inter alia*, that the office bearers at the ninth AGM were to hold an AGM of the MC within 60 days from the date of the award ('SMT award'). Dissatisfied with the SMT award, the third intervener filed a judicial review application, to review the said award ('JR 411'). The plaintiffs, in compliance with the SMT award, convened the tenth AGM of the MC and elected, *inter alia*, the second and third plaintiffs as new committee members. The second intervener refused to accept the election results and had informed the members elected in the tenth AGM that he would continue to function and act for the MC and that he had requested the COBKL to take appropriate action. The MC, consisting of those elected in the tenth AGM, wrote to inform Maybank about the election of new committee members and that there was a change in the bank signatories for the MC's bank account. Maybank then sought verification from the COBKL on the new committee members of the first plaintiff. The COBKL, in its reply, (i) was unable to confirm the committee members elected at the tenth AGM as the 'court had yet to make a decision'; and (ii) informed Maybank that it was allowed to rely on the letter of recognition dated 23 September 2021 until the issuance of a fresh letter of recognition by the COBKL. The COBKL subsequently wrote to the MC, stating that a letter of recognition could not be issued as: (i) the statutory declaration filed by the MC failed to adhere to the required format and was not signed by the elected committee members; and (ii) no audited account was presented together with the auditor's report in the tenth AGM ('letter dated 13 January 2022'). The MC issued a letter of demand to Maybank, demanding acceptance of the new committee members elected in the tenth AGM as the authorised signatories of the MC to operate the MC's bank account. The said letter conveyed the MC's stand that Maybank had wrongfully frozen the MC's bank account. The MC also wrote to the COBKL, (i) requesting a withdrawal of the letter dated 13 January 2022; and (ii) highlighting that the SMT award required the tenth AGM to be convened within 60 days from the date of the said award. The COBKL, in response, stated that the letter dated 13 January 2022 shall be maintained and that no letter of recognition of the new committee members shall be issued until the High Court has decided on the issues disputed by the parties. Meanwhile, Maybank refused to recognise the second and third plaintiffs as signatories to operate the MC's bank account. There were further applications by the interveners at the SMT but they were decided against the interveners. The interveners' applications for judicial reviews at the High Court, including JR 577, were also dismissed. Maybank was notified of the dismissal of those JR applications and the MC had informed Maybank that JR 411 was also dismissed. The plaintiffs subsequently requested Maybank to recognise the second and third plaintiffs as authorised signatories to operate the MC's current account; this request was rejected by Maybank. The COBKL finally relented and wrote to the

A MC, stating that, in view of the High Court's decisions in the judicial review applications, a letter was being issued to recognise certain individuals as the new committee members of the MC. The plaintiffs filed this action to seek declarations regarding the powers of the COBKL under s. 4(1) of the Strata Management Act 2013 ('SMA') and for consequential orders against
B Maybank.

Held (issuing orders as per para. [63] of judgment):

(1a) The powers of the COB are circumscribed by the SMA. The SMA does not enable the COBKL to impose additional requirements for
C statutory declarations in a particular format or other additional requirements for statutory declarations in a particular format or other additional documents to be filed by the newly elected committee members to prove their identity. Further, there is no provision in the SMA, or its Schedules, or in any Regulations made by the Minister of Housing and Local Government, which authorises a COB to issue
D 'letters of recognition' of newly elected committee members. It is for the parties disputing the validity of the election held during an AGM to commence proceedings to restrain the execution of resolutions passed at a general meeting or to challenge the election of any committee member. (paras 51 & 53)

E **(1b)** It is not for the COB to enter the arena when there is a dispute between proprietors over the propriety of elections held at general meetings. The COB's role is to ensure that AGMs are convened. In the present case, it was obvious that the COBKL had erred because the High Court had, in fact, dismissed the third intervener's application to stay the
F SMT award in JR 411. Yet, the COBKL had taken the erroneous position that he needed to wait for the final outcome of the judicial review application. The COBKL had erred in its replies to the MC and in advising Maybank to continue to use the previous 'letter of recognition' to recognise committee members as signatories to operate
G the MC's bank account. (paras 53 & 56)

(2) Maybank had erred in taking the position that it must await a 'letter of recognition' from the COBKL, even after it had received all the necessary documents from the plaintiffs that were sufficient for the confirmation of the new committee members, including the
H resolutions containing the names, identity card numbers and specimen signatures of those chosen ones. Maybank's decision was based on a dispute between the second and third plaintiffs and the intervener about the legality of the first plaintiff MC's AGM and the election of new committee members. This was not a sufficient ground to freeze
I the bank account. (paras 58 & 59)

(3) Without delving into s. 145 of the SMA, the facts of this case did not justify an order for damages to be paid by the COBKL to the plaintiff. Section 145, no doubt, did not prohibit the court from issuing declarations that should be sufficient to vindicate the plaintiffs and ensure that the COBKL does not act *ultra vires* of the SMA in the future. Since the first plaintiff MC had been deprived of the use of money in its account due to the erroneous decision which amounted to a breach of contract between the first plaintiff and Maybank, it would be fair to order Maybank to pay interest on the balance money held in the first plaintiff MC's bank account at the rate of 4% per annum. (paras 57 & 61)

Case(s) referred to:

Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd [2013] 9 CLJ 813 FC ***(refd)***

Dato' Yu Kuan Huat v. Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur & Anor [2023] CLJU 265; [2023] 1 LNS 265 HC ***(refd)***

Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor [2019] 10 CLJ 547 CA ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 17

Strata Management Act 2013, ss. 4(1), 17(1), 57(5), 62(3), (4), 105(1), 145, 150(1), reg. 11(5), Second Schedule

For the plaintiffs - Lai Chee Hoe & Ooi Xin Yi; M/s Seira & Sharizad
For the 1st defendant - Kathiravan Raveenthran & Jesssica Dass; M/s Che Mokhtar & Ling
For the 2nd defendant - Muhamad Al Muazzim Azmi Amin; M/s Azam Lim & Pang
For the interveners - Chandra Theeran; M/s WK Lim & Partners

Reported by Najib Tamby

JUDGMENT

Gan Techiong JC:

Introduction

[1] The main subject matter of this case is the scope of power of a commissioner of buildings appointed under s. 4(1) of the Strata Management Act 2013. The plaintiffs have filed this action to seek declarations regarding the power of the commissioner of buildings of Kuala Lumpur (the first defendant) and for consequential orders against the second defendant.

[2] After reading the cause papers and hearing lengthy submissions of learned counsel for all the parties, including submissions by learned counsel for the interveners, I find that the power of the commissioner of buildings is circumscribed by the Strata Management Act 2013. Based on the facts of this case, the five declarations that this court has issued, pursuant to prayer (8) of the originating summons for such further and/or other order or relief which this court deems fit and fair, are summed up as follows:

A (i) a declaration that the first defendant commissioner of buildings of Kuala Lumpur is to rely on:

(a) the documents filed by the strata management committee of the first plaintiff Diamond F Management Corporation pursuant to para. 7(8) of the Second Schedule of the Strata Management Act 2013, which are certified true copies of the resolutions passed at the general meeting and certified true copies of the minutes of general meeting; or

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(b) an award of the Strata Management Tribunal; or

C (c) a court order regarding the management committee members;

to verify the names of those strata management committee members elected at the general meeting of the first plaintiff Diamond F Management Corporation;

D (ii) a declaration that only those documents specified in para. 7(8) of the Second Schedule of the Strata Management Act 2013 are mandatory to be filed by a management corporation for the purpose of verifying the names of those strata management committee members elected at a general meeting of a management corporation, and that a commissioner of buildings has no power to require additional documents to be filed for the aforesaid purpose;

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(iii) a declaration that the management committee members of a management corporation do not require any "letter of recognition" from the commissioner of buildings to be recognised as the committee members elected at a general meeting;

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(iv) a declaration that the requirement imposed by the commissioner of buildings of Kuala Lumpur, for a statutory declaration to be submitted by the management committee members of Perbadanan Pengurusan Diamond F, was *ultra vires* and void; and

G (v) a declaration that paras. 3.1 and 3.2 of a circular dated 19 October 2016 issued by the first defendant commissioner of buildings of Kuala Lumpur and known as "PEKELILING COBKL 2016/01", which makes it mandatory for a "Surat Akuan Bersumpah" (Statutory Declaration) dan "Maklumat Tambahan Anggota Jawatankuasa" (additional information about committee members) to be filed by strata management committees, was *ultra vires* and void.

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[3] Even though this court has decided in favour of the plaintiffs, the declarations issued are not as worded in the plaintiffs' prayers. My reasons are explained in detail hereinbelow.

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Background Facts

[4] The first plaintiff is the management corporation ("the MC") of a stratified development known as Diamond F. So is the first intervener, *albeit*, named as an intervener because the second, third and fourth interveners challenge the authority of the second and third plaintiffs to name the MC of Diamond F as a party in this action.

[5] The second and third plaintiffs were elected as committee members of the MC at its 9th Annual General Meeting ("AGM") convened on 25 May 2019.

[6] The second and third interveners were also elected as committee members of the MC at its 9th AGM on 25 May 2019.

[7] Disputes between the committee members erupted on 6 August 2020 when the third intervener filed an application at the Strata Tribunal to challenge the validity of the election of the second plaintiff Rajakumar a/l Rajaratnam as a committee member. The case at the Strata Management Tribunal was registered as Tribunal Case No.TPS/W-2105-8/20 ("Tribunal No. 2105")

[8] For some reasons, the third intervener's application (Tribunal No. 2105) at the Strata Tribunal was not heard expeditiously. Meanwhile, on 11th May 2021, the commissioner of buildings of Kuala Lumpur ("the COBKL") issued a "letter of recognition" purportedly validating the following persons as the committee members of Diamond F Management Corporation, namely:

(i) Lim Chee Wee (the second intervener);

(ii) Paramasivam a/l Ramasamy (the third intervener); and

(iii) Liew Yoon Keong (the third plaintiff).

[9] The COBKL followed up with its 'validation exercise' on 23 September 2021 *vide* a letter to the second defendant Maybank Islamic Berhad ("Maybank") stating that Lim Chee Wee (the second intervener), Paramasivam a/l Ramasamy (the third intervener) and Liew Yoon Keong (the third plaintiff) are the legitimate committee members of the first plaintiff Diamond F Management Corporation.

[10] On 22 November 2021, the Strata Management Tribunal issued its award (in Tribunal Case No. 2105) ordering, *inter alia*, that the office bearers elected at the ninth AGM, *ie*, the chairman, deputy chairman, secretary and treasurer are to hold an AGM of the MC within 60 days from the date of the award.

[11] The third intervener was dissatisfied with the said award and filed a Judicial Review Application on 22 December 2021 at the High Court at Kuala Lumpur, registered as JR No. 25-411-12/2021 ("JR No. 411") to review the said tribunal award.

[12] The plaintiffs complied with the said tribunal award by convening the tenth AGM of the MC on 23 December 2021. The following members were elected as the new committee members:

(i) Rajakumar a/l Rajaratnam (the second plaintiff);

(ii) Lim Joon Seong; and

(iii) Paul Liew Yoon Keong (the third plaintiff).

[13] The second intervener refused to accept the election results and he sent an email to inform the members elected in the tenth AGM, insisting that he would continue to function and act for the MC and that he has requested COBKL to "take appropriate action".

[14] On 27 December 2021, the MC (consisting of those elected in the tenth AGM) wrote to the COBKL to update about the new committee members and requested recognition forthwith because:

(i) a food deliveryman was trapped in a lift for an hour;

(ii) the lift contractor stated that he would only take instructions from the second intervener; and

(iii) the second intervener did not inform the contractor about the election of new committee members.

[15] A day later on 28 December 2021, the MC wrote to inform the second defendant Maybank about the election of new committee members and that there is a change in the bank signatories for the MC's bank account. Maybank responded by email, to the COBKL on 3 January 2022 seeking verification of the new committee members of the first plaintiff MC.

[16] On 10 January 2022, the COBKL replied to Maybank's said email but stated that the COBKL was unable to confirm the committee members elected at the tenth AGM on 23 December 2021 because the "court had yet to make a decision". The COBKL further informed Maybank that it is allowed to rely on the letter of recognition dated 23 September 2021 until the issuance of a fresh letter of recognition by the COBKL.

[17] On 13 January 2022, the COBKL wrote to the MC stating that a letter of recognition could not be issued due to the following reasons:

(i) the statutory declaration filed by the MC failed to adhere to the required format and was not signed by the elected committee members; and

(ii) no audited account was presented together with the auditor's report in the 10th AGM.

[18] On 17 January 2022, the MC *via* its solicitors, Messrs Heaw Eng & Goh issued a letter of demand to Maybank demanding acceptance of the new committee members elected in the tenth AGM as the authorised signatories of the MC to operate the MC's bank account. The said letter conveyed the MC's stand that Maybank had wrongfully frozen the MC's bank account.

[19] The MC's new solicitors, namely Messrs Chee Hoe & Associates, took further action on behalf of the MC on 24 January 2022 by writing to the COBKL requesting a withdrawal of the said letter dated 13 January 2022 within seven days from the date of that letter. It was highlighted to the COBKL that the tribunal award in Tribunal No. 2105 required the tenth AGM to be convened within 60 days from the date of the award.

[20] On 27 January 2022, the COBKL sent a reply to the MC's solicitors letter stating that the COBKL's letter dated 13 January 2022 shall be maintained, that no letter of recognition of the new committee members shall be issued until the High Court has decided on the issues disputed by the parties.

[21] The dispute was widened when Maybank issued a letter on 8 February 2022 to reply the MC's letter dated 17 January 2022, confirming the bank's decision to refuse to recognise the second and third plaintiffs as signatories to operate the MC's bank account, giving the reason that they are allegedly not the authorised committee members of the MC.

[22] There were further applications filed by the interveners at the Strata Tribunal but for the purpose of this action, the details are irrelevant, save to state that the Strata Management Tribunal decided against the interveners. Their applications for judicial reviews at the High Court, including JR Application No. WA-25-577-11/2022 ("JR No. 577") were also dismissed after hearing.

[23] It is undisputed that the second defendant Maybank did receive notice of dismissal of those JR applications. On 24 November 2023, the MC had informed the bank that the first judicial review application, *ie*, JR No. 411, was dismissed by the High Court on 28 October 2023.

[24] The plaintiffs further aver that in a letter (undated) sent in April 2024 to Maybank (the second defendant), they had informed the bank about the dismissal of JR No. 577 by the High Court, and had requested Maybank to recognise the second and third plaintiffs as authorised signatories to operate the MC's current account. This request was rejected by Maybank.

[25] Finally, on 8 August 2024, the COBKL relented and wrote to the MC stating that in view of the High Court's decisions in the JR applications, a letter of recognition was being issued to recognise the following persons as the committee members of the MC:

(i) Rajakumar a/l Rajaratnam - Chairman of the MC

(ii) Lim Joon Seong - Secretary; and

(iii) Liew Yoon Keong - Treasurer.

The Plaintiffs' Submissions

[26] Learned counsel for the plaintiffs submitted on the chronology of events set out above and cited several authorities which I shall quote below.

[27] The essence of the submissions for the plaintiffs is that the COBKL had acted *ultra vires* as there is no power to impose requirements for a statutory declaration and other additional documents to be submitted.

[28] Learned counsel also strongly contended that as there is no legal requirement for any "letter of recognition" to be issued by COBKL to enable the second defendant Maybank to allow a change of signatories for the MC's bank account. It was also submitted that the second defendant ought to be held liable to pay special damages for the loss of use of monies at a rate of 8% per annum daily rest.

The defendants' And Interveners' Submissions

[29] Learned counsel for the first defendant submitted that the COBKL did not make any decision and did not act *ultra vires*. Reliance was placed on a decision of the High Court on a judicial review application, in *Dato' Yu Kuan Huat v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur & Anor* [2023] CLJU 265; [2023] 1 LNS 265; [2023] MLJU 305.

[30] In short, the first defendant COBKL takes the position that he is entitled to ask for more documents from the MC for verification purposes and that the documents which were provided by the plaintiffs were incomplete.

[31] It was also submitted that the plaintiffs have submitted a statutory declaration when it was first demanded by the first defendant COBKL and are therefore estopped from challenging the power of the COBKL to ask for the same for verification purposes.

[32] It was also further submitted for the first defendant COBKL that the filing of this action by the plaintiffs before the conclusion of judicial review applications (JR No. 411 and JR No. 577) is an abuse of the process of court.

[33] As for the second defendant Maybank, its position is that the first plaintiff's account was not frozen but merely suspended pending verification as to the new signatories. As an alternative submission, reference was made to the bank's clause M.3 of its terms and conditions governing deposit accounts for Islamic Banking to show that the bank has the discretion to freeze the first plaintiff's account.

[34] Further, the second defendant takes the position that it is entitled to rely on the "letter of recognition" issued by the first defendant COBKL to determine whether those persons stated in the MC's letter as the new committee members were indeed the committee members.

[35] The interveners' submissions were, with respect, of little assistance. They narrated the chronology of their disagreement with the plaintiffs and supported the submissions of the defendants, praying that the plaintiffs' application ought to be dismissed by this court.

[36] The interveners' earlier written submissions submitted that the second and third plaintiffs may be appointed as the signatories of the MC's bank account if and only if a second judicial review application, *ie*, JR No. 577 is decided in favour of those two plaintiffs. As a matter of fact, JR No. 577 was dismissed by the High Court in early 2024.

Analysis Of The Facts And Law

[37] From the facts set out above, it is clear that the main issues are about the power of a commissioner of buildings appointed under s. 4(1) of the Strata Management Act 2013 ("SMA 2013"). The secondary issues are whether the second defendant Maybank ought to be held liable to compensate the plaintiffs for having relied on a letter issued by the first defendant COBKL and declining to recognise the new committee members (the second and third plaintiff) as signatories to operate the MC's bank account.

[38] First, I agree with learned counsel for the plaintiffs that the scope of jurisdiction and power of a commissioner of buildings appointed under the SMA 2013 have been dealt with by the Federal Court in *Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd* [2013] 9 CLJ 813; [2014] 1 MLJ 14. The relevant passage from the judgment of the Federal Court is as follows:

> On the learned judge of the High Court's finding that the respondent's conduct in not challenging the commissioner's lack of jurisdiction would appear to indicate that the respondent had accepted the commissioner's jurisdiction to determine the matter, we are in full agreement with the Court of Appeal's view that *no amount of consent or acquiescence by the respondent could confer on the commissioner a power which the Act had not conferred upon him. The powers and duties of the commissioner are circumscribed by the provisions of the Act and he does not have power which has not been granted to him under the Act*.
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> (emphasis added)

[39] In a more recent case, the Court of Appeal in *Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor* [2019] 10 CLJ 547; [2020] 3 MLJ 645 considered the scope of power conferred on a joint management body ("JMB") and decided that the power of a JMB is limited to whatever are

authorised pursuant to the SMA 2013. The following passages from the judgment of the Court of Appeal reiterates the rule that the court will not read words into a statute unless clear reason for it is to be found in the statute itself:

> [34] **The court will not read words into a statute unless clear reason for it is to be found in the statute itself** (*Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2007] 6 MLJ 581 (FC)). Therefore, in construing any statute, the court will firstly, look at the words in the legislation and apply the plain and ordinary meaning of the words in the statute. If there is any ambiguity to the words used, the court is duly bound to accept it even if it may lead to mischief. Where the language used is clear and unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable.
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> ...
>
> [36] As a creature of statute, the powers of the JMB are limited and circumscribed by the SMA 2013 which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its establishment, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. **What the SMA 2013 does not expressly or impliedly authorise is to be taken to be prohibited**.

[40] The words of the Federal Court in *Badan Pengurusan Bersama Paradesa Rustika* (*supra*) – as quoted in para 38 above – provided guidance for this court to determine two issues. The first is that if the first defendant COBKL does not have the power to demand the filing of a statutory declaration, no amount of consent or acquiescence by the plaintiffs could confer such a power. The remaining issues are whether the first defendant COBKL had the power and jurisdiction to act as he did, *inter alia*, putting the Strata Management Tribunal's awards in abeyance and insisting on awaiting the decision of judicial review applications even though there was no stay order issued by the High Court, and telling the second defendant Maybank to be guided by its earlier "letter of recognition" that was issued in September 2021.

[41] In my view, the answer to those questions and issues raised regarding the scope of the COBKL's power must be based, with reference to the facts of this case, on the SMA 2013 and/or other laws and regulations governing the function of a Commissioner of Buildings and management corporations. Section 150(1) of the SMA 2013 empowers the Housing Minister to make regulations for the better carrying out of the provisions of the said Act, but no such power is conferred upon a commissioner of buildings. Section 150(1) reads:

> **The Minister may**, after consultation with the National Council for Local Government, **make such regulations** as may be expedient or necessary for the better carrying out of the provisions of this Act.
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> (emphasis added)

[42] I find that there is little room for the first defendant COBKL to deny that his office was acting as if he has the power to issue "letters of recognition" of committee members. This is evident from an email sent from the first defendant COBKL's office on 10 January 2022 to the second defendant Maybank. That email was addressed to one Encik Yusri Md Kasri who affirmed an affidavit on 13 June 2023 in his capacity as the Assistant Branch Manager of the second defendant's branch where the MC's bank account is held. In the said email, the first defendant informed the second defendant Maybank that it may continue to regard the COBKL's letter of recognition dated 23 September 2021 as applicable until a further letter is issued by COBKL. A screenshot of the said email is shown below:

> From: Norshsreen Faizzui Che Mansor <faizzul@dbkl,gov.my>
>
> Sent: Monday, ID January, 2022 2:21 PM
>
> To: Yusri Bin Md Kasri
>
> Cc: Zaisatul Khairyzal Salleh
>
> Subject: jawapan berkenaan pengesahan daripada cobkl
>
> WARNING! This is an email from an external party. Do not click on any sink or open any attachment if you cannot ascertain that it is safe.
>
> AMARAN! E-mel ini dihantaroleh pihak luar, Jika anda tidak pasti akan kesahihandan keselamatan kandungannya, jangan klik pautan (link) ataupun membuka lampiran (attachment) dari e-mel ini.
>
> Assalamualatkum.
>
> Marujuk kepada email En Yusri kepada En Ryzal (my bos) berkenaan dengan persoalan mengenai:
>
> Pihak Maybank ingin mendapatkan pengesahan dari Pihak Tuan (COBKL) berkenaan dengan Jawatan kuasa yang diberi mandat untuk mentadbir akaun Diamond F Management Corporation (DFMC),
>
> Jawapan:
>
> Pihak COBKL tidak boleh mengesahkan ajk DFMC yang didakwa telah dilantik melalui AGM pads tarikh 23/12/2021 kerana masih belurn ada keputusan daripada mahkamah, Oleh itu pihak Maybank boleh menggunapakai surat pengesahan ahli-ahli jawatankuasa (ajk) Perbadanan Pengurusan (MC) Diamond F bertarikh 23 September 2021 dan di email kepada norasheila.m@maybank.com pada 27 September 2021 sehingga surat pengesahan ahli-ahli jawatankuasa (ajk) yang baru dikeluarkan oleh COBKL.
>
> Sekian terima kasih

[43] In order to understand the scope of the power of a Commissioner of Building ("a COB"), who is appointed by the local authority wherever there are stratified buildings, it is necessary to examine the role of his office. There is no doubt that a COB plays an important role in the management of strata

properties. In fact, a COB is involved from the time of the formation of a joint management body, *ie*, before the existence of a management corporation. The COB has to issue a certificate certifying that the joint management body has been duly established under the SMA 2013 on the day when the first annual general meeting was convened.

[44] After a management corporation is brought into existence statutorily by virtue of s. 17(1) of the SMA 2013 upon the opening of a book of the strata register in respect of a subdivided building or land, the COB has the power, pursuant to s. 57(5) of the SMA 2013, to appoint a person to convene the first annual general meeting of the management corporation within such time as may be specified by the COB, and the developer who has failed to convene the first annual general meeting within the period specified in the said Act shall pay all the expenses incurred for that purpose.

[45] In order to ensure compliance with the setting up of a management committee and the convening of general meetings, reg. 11(5) of the Second Schedule, SMA 2013 empowers the COB to appoint any person to convene an extraordinary general meeting for such purposes as may be approved by the COB, in the event of the COB being satisfied that the management committee has not been properly constituted.

[46] It could be seen from the provisions of the SMA 2013 and the Second Schedule to the said Act that the role of a COB is administrative and supervisory. A COB has no adjudicatory power. Under the SMA 2013, the Strata Management Tribunal which power and jurisdiction are listed in s. 105(1) of the said Act, is vested with limited power to adjudicate disputes.

[47] Paragraph 7(8) of the Second Schedule of the SMA 2013 stipulates a period of 28 days from the date of an AGM for a new management committee to file certified true copies of the audited accounts of the MC together with the auditor's report which has been presented during the general meeting, resolutions passed at the general meeting and the minutes of the meeting. There is no other document required because the names of the newly elected committee members would be recorded in the certified true copy of the minutes of the AGM. The duty of the COB is to ensure that the AGM is convened and that certified true copies of the documents stipulated under the said para. 7(8) of the Second Schedule are filed within 28 days from the AGM.

[48] If there is a dispute between the proprietors regarding the validity of a general meeting, it should be referred to the Strata Management Tribunal if the dispute is within its jurisdiction or to the High Court for a ruling. Meanwhile, unless there is an injunction or stay order of the Strata Management Tribunal's award pending judicial review, a COB is bound to accept the certified true copies of those documents filed under para. 7(8) of the Second Schedule or a Strata Management Tribunal's award (if any) as documents which satisfy the requirements of the SMA 2013. This is the legal

position because para. 7(5) of the Second Schedule of the SMA 2013 states that the minutes of meeting signed by the chairman of the meeting or the secretary shall be admissible in any legal proceedings as *prima facie* evidence of the facts stated in them without further proof.

[49] In considering the merits of the plaintiffs' claim and the defendants' submissions, I have looked through other sections of the SMA 2013 to search for provisions which could possibly be construed as empowering a COB to impose requirements for additional documents to be furnished besides those stated in the said para. 7(8). I considered whether s. 62(3) & (4) of the SMA 2013 could be 'stretched' to empower a COB to require a management corporation to furnish other documents such as statutory declarations to prove the identity of the newly elected committee members, *etcetera*, because "and information" are stated there. Section 62(3) reads:

> The management corporation shall furnish to the Commissioner or any public authority such returns, reports, accounts **and information** with respect to its activities and finances, as the Commissioner may, from time to time, require or direct.
>
> (emphasis added)

[50] However, after reading the said provision thoroughly and noting that the said s. 62 is under the subject of "duties of management corporation in relation to accounts", I am satisfied that only para. 7(5) and 7(8) of the Second Schedule of the SMA 2013 are applicable. Section 62(3) of the SMA 2013 is to ensure that a management corporation's accounts are duly kept and audited, and cannot be extended to empower the COBKL to require statutory declarations to be filed. Any attempt to stretch s. 62 would run afoul of the principle enunciated by the Court of Appeal in *Muhamad Nazri Muhamad v. JMB Menara Rajawali* (*supra*): "What the SMA 2013 does not expressly or impliedly authorise is to be taken to be prohibited".

[51] Thus, I agree with submissions by learned counsel for the plaintiff that the SMA 2013 does not enable the COBKL to impose additional requirements for statutory declarations in a particular format or other additional documents to be filed by the newly elected committee members to prove their identity.

[52] The facts of our present case show that after the Strata Management Tribunal had issued its award, the COBKL had decided to decline to abide by it simply because the interveners had filed a judicial review application. No doubt it was possible that the judicial review application could result in a different ruling from the Strata Management Tribunal. Be that as it may, the onus was on the interveners to obtain a stay order – which they failed to do – pending judicial review.

[53] Further, there is no provision in the SMA 2013 or its schedules or in any regulations made by the Housing Minister which authorises a COB to issue "letters of recognition" of newly elected committee members. It is for the parties disputing the validity of the election held during an AGM to commence proceedings – as explained above – to restrain the execution of resolutions passed at a general meeting or to challenge the election of any committee member. The role of a COB in this regard is analogous to that of the Registrar of Companies remaining neutral in the event of a dispute between shareholders or directors of a company. The companies commission just need to ensure compliance with regulatory requirements such as the filing of annual returns and updates of changes in a company's board of directors or equity. It is not for the COB to enter the arena when there is a dispute between proprietors over the propriety of elections held at general meetings. The COB's role is to ensure that AGMs a reconvened. In our present case, it is obvious that the COBKL had erred because the High Court had in fact dismissed the third intervener's application to stay the tribunal award in JR No. 411 on 5 July 2022. Yet, COBKL had taken the erroneous position that he needed to await the final outcome of the judicial review application.

[54] As for *Dato' Yu Kuan Huat v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur & Anor* (*supra*) cited by learned counsel for the first defendant, it was a judicial review application to challenge a 'decision' of COBKL. There, the learned judge held that there was no decision to be reviewed. It was also pointed out that the applicant was in fact aggrieved with the convening of the second AGM including the election of the officer-bearers and passing of the resolutions therein, and that the proper forum to hear his grievances is the Strata Tribunal. This is evident from the following passage of the learned judge's judgment:

> [35] I hold that there is no decision to review on the basis that the COB did not make any decision as alleged by the applicant. In applicant is in fact aggrieved with the convening of the second AGM including the election of the officer-bearers and passing of the resolutions therein. In such a situation, the proper forum to bring the matter for adjudication was before the Strata Management Tribunal for adjudication ("the Tribunal").
> ...
>
> [36] As shown above, in essence the applicant is aggrieved with the second AGM and the election of the office-bearers. Such complaints must be taken to the Tribunal and not the High Court by way of judicial review. To require the High Court to consider these matters is to avoid the Strata Management Tribunal which was specifically set up to hear such disputes. It is an abuse of the process of the High Court.

[55] Therefore, I arrive at the inevitable conclusion that there is no provisions in the SMA 2013 or its schedules that empowers the first defendant COBKL to require a statutory declaration to be filed together with those documents stated in para. 7(8) of the second Schedule of the said Act.

[56] In the circumstances, I find, with due respect, that the COBKL had erred in its replies to the MC and also in advising the second defendant Maybank to continue to use the previous "letter of recognition" to recognise committee members as signatories to operate the MC's bank account.

[57] It is my finding, without delving into s. 145 of the SMA 2013, that the facts of this case do not justify an order for damages to be paid by the first defendant COBKL to the plaintiffs. There is, however, no doubt that s. 145 does not prohibit this court from issuing declarations that should be sufficient to vindicate the plaintiffs and ensure that the COBKL does not act *ultra vires* of the SMA 2013 in the future.

[58] As for the second defendant Maybank's position, I agree with part of the submissions by its learned counsel. There is a need for banks to verify the identity of persons who are to be the signatories to operate bank accounts. This is to prevent scams. However, in this case, the second defendant Maybank had erred in taking the position that it must await a "letter of recognition" from the COBKL, even after it has received all the necessary documents from the plaintiffs that were sufficient for confirmation of the new committee members, including the resolutions containing the names, identity card numbers and specimen signatures of those chosen ones.

[59] If the second defendant Maybank's decision to freeze the first plaintiff MC's bank account had been due to genuine suspicion of forgery of the MC's resolutions or doubt about the true identity of those persons who introduced themselves as the new committee members or about the authenticity of any document submitted by the bank's customer (the first plaintiff MC), it might have been a justifiable decision based on facts. However, in this case the bank's decision was based on a dispute between the second and third plaintiffs and the interveners about the legality of the first plaintiff MC's annual general meeting and the election of new committee members. This is, with respect, not a sufficient ground to freeze the bank account; not even by resorting to the bank's clause M3 of its terms and conditions for Islamic Banking deposit accounts. The second defendant Maybank could have filed an interpleader application, pursuant to O. 17 of the Rules of Court 2012, to see directions from the court but did not do so.

[60] As shown in the chronology of events set out above, the second defendant Maybank's decision – based on its erroneous position – was conveyed in its letter dated 8 February 2022 to reply the MC's letter dated 17 January 2022, confirming the bank's decision to refuse to recognise the second and third plaintiffs as signatories to operate the MC's bank account.

[61] Thus, since the first plaintiff MC has been deprived of the use of money in its account due to that erroneous decision which amounted to a breach of contract with between the first plaintiff and the second defendant Maybank, it would be fair for this court to order to the second defendant Maybank to pay interest on the balance money held in the first plaintiff Perbadanan Pengurusan Diamond F's bank account at the rate of 4% per annum. In fairness, interest is to be calculated from the date of the second defendant's letter to the first plaintiff's solicitors dated 8 February 2022 until the date of release of the said account.

Conclusion

[62] In conclusion, if the COB is to be vested with wider powers, it would be for the Housing Minister to invoke s. 150(1) of the SMA 2013 (as cited in para. 41 above) to make regulations for that purpose, for the better carrying out of the provisions of the said Act. Until that is done, the power of the COB is circumscribed by the existing provisions of the said Act and the Second Schedule thereto.

[63] Pursuant to prayer (8) of the originating summons for such further and/or other order or relief which this court deems fit, I decided that this court ought to issue the following order:

(i) a declaration that the first defendant commissioner of buildings of Kuala Lumpur is to rely on:

(a) the documents filed by the strata management committee of the first plaintiff Diamond F Management Corporation pursuant to para. 7(8) of the Second Schedule of the Strata Management Act 2013, which are certified true copies of the resolutions passed at the general meeting and certified true copies of the minutes of general meeting; or

(b) an award of the Strata Management Tribunal; or

(c) a court order;

to verify the names of those strata management committee members elected at the general meeting of the first plaintiff Diamond F Management Corporation;

(ii) a declaration that only those documents specified in para. 7(8) of the Second Schedule of the Strata Management Act 2013 are mandatory to be filed by the first plaintiff for the purpose of verifying the names of those strata management committee members elected at the general meeting of the first plaintiff Diamond F Management Corporation, and that the first defendant commissioner of buildings of Kuala Lumpur has no power to require additional documents to be filed for the aforesaid purpose;

(iii) a declaration that no "letter of recognition" of strata management committee members is required to be issued by the first defendant commissioner of buildings of Kuala Lumpur to certify the names of the committee members elected at the annual general meeting of the first plaintiff and that the management committee does not require any letter of recognition from the first defendant commissioner of buildings of Kuala Lumpur for the purpose of managing the building management corporation and common property;

(iv) a declaration that the letter dated 13th January 2022 issued by the first defendant commissioner of buildings of Kuala Lumpur to the first plaintiff Perbadanan Pengurusan Diamond F, which had required a statutory declaration to be submitted by the management committee members, was *ultra vires* and void;

(v) a declaration that paras. 3.1 and 3.2 of a circular dated 19 October 2016 issued by the first defendant commissioner of buildings of Kuala Lumpur and known as "PEKELILING COBKL 2016/01", which makes it mandatory for a "Surat Akuan Bersumpah" (statutory declaration) dan "maklumat tambahan anggota jawatankuasa" (additional information about committee members) to be filed by strata management committees, was *ultra vires* and void;

(vi) The second defendant is to release the bank account of the first plaintiff Perbadanan Pengurusan Diamond F and to accept the first plaintiff's letter and the resolution enclosed therewith for the purpose of confirming the names of the committee members, who were chosen at the annual general meeting on 30 December 2023, to be the signatories to operate the first plaintiff's bank account;

(vii) the second defendant is to pay interest on the balance money held in the first plaintiff Perbadanan Pengurusan Diamond F's bank account at the rate of 4% per annum calculated from 8 February 2022, *ie*, the date of the second defendant's letter to the first plaintiffs solicitors, until the date of release of the account.

[64] Since the disputes between the plaintiffs and the defendants arose due to actions taken by the interveners, primarily by Lim Chee Wee, this court orders that costs of RM10,000 be paid to the first plaintiff by the second intervener Lim Chee Wee, RM5,000 to be paid by the third intervener Paramasivam Ramasamy to the first plaintiff and also RM5,000 by the fourth intervener Tham Thai Leen to the first plaintiff. Lastly, the second and third plaintiffs' costs are to be borne by the first plaintiff which shall receive payment of costs from the interveners.